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FEDERAL COMMUNICATIONS COMMISSION

Before the

Federal Communications Commission

Washington, DC 20554

In the Matter of)
Inquiry on Competitive Bidding Process) WT Docket No. 97-150
for Report to Congress)

Motion of AirTouch Communications, Inc. to Accept Late Filed Comments

AirTouch Communications, Inc. ("AirTouch"), respectfully requests that the Commission accept the attached Comments in the above captioned proceeding one business-day late.

AirTouch made significant efforts to file the attached Comments on August 1, 1997, pursuant to the Commission's Public Notice (FCC 97-232, July 2, 1997) issued in this proceeding. That deadline could not be met, however, due to word processing-related difficulties that precluded the completion of the Comments and their timely filing with the Commission.

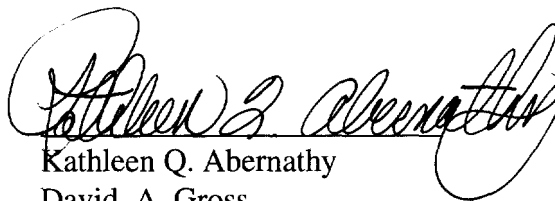
Neither the Commission nor any party should be adversely affected by the late filing of the attached Comments. Copies of these Comments have been hand delivered to the designated Commission staff official and to the Commission's contractor as specified.

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The attached Comments contain information that should be helpful to the Commission in this important inquiry. Accordingly, AirTouch respectfully requests the Commission to accept and give consideration to the attached Comments.

Respectfully submitted,



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August 4, 1997

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Federal Communications Commission

Washington, DC 20554

In the Matter of)
Inquiry on Competitive Bidding Process) WT Docket No. 97-150
for Report to Congress)

COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.

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August 4, 1997

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SUMMARY

In these Comments, AirTouch recommends that the Commission pursue the following policies to improve the workings of auctions for spectrum licenses:

- *Clearly specify its plans for future spectrum allocation.* The resulting reduction in uncertainty will lead to less risk for investors and thus lead to greater bids at auction, more rapid investment in quality improvement and capacity expansion for current services, greater investment in the introduction of innovative new technologies and services, and greater consumer benefits.
- *Allocate spectrum for specific uses.* A well-defined spectrum allocation plan creates greater certainty for business planners. This reduction in risk facilitates carriers' raising capital, allowing them to build out their networks more rapidly and to introduce innovative new technologies and services sooner.
- *Strongly punish winning bidders who fail to honor their commitments.* The Commission's failure to enforce its rules would reduce auction revenues, weaken competition, and slow the introduction of new services and technologies.
- *Do not change the rules of the game in the middle.* Bidders need to know the rules of each auction and service in order to formulate bidding strategies and to make plans to offer service in the event that they succeed in winning a license.
- *Recognize that the use of auctions does not encourage the rapid introduction of new technologies.* The use of auctions only compounds the uncertainty of launching new services and increases the financial pressures for licensees to play it safe.
- *Ensure that only qualified entities are granted licenses.* It is important for the Commission to minimize the chance that a winning bidder will later refuse to meet its commitments.
- *Prevent excessive concentration in the granting of subsidies and other preferences to designated entities.* The Commission should act to ensure that subsidies and preferences do not end up benefiting only a few, relatively large designated entities.
- *Create license areas for designated entities that reflect their more limited capacity to raise capital.* This approach makes bidding by truly small parties feasible because they have a greater chance of obtaining the resources needed to market services and operate networks on a commercially successful basis.

- *Target subsidies to those services in which legitimate designated entities have realistic chances.* For example, the Commission should focus its efforts on wireless markets that are less capital intensive and where minimum efficient scale is not as large.
- *Require significant (percentage) up-front payments from designated entities.* If an entity cannot make a significant down payment, there is little reason to believe that they will be able to fund the build-out.
- *Adopt stringent build-out requirements for subsidized entities.* To the extent that they are not bearing the full cost of the license, subsidized entities may not utilize the spectrum at efficient levels. If the Commission is concerned about perceptions of fairness, it could impose similar build-out requirements on all winning bidders, including those who do not receive subsidies or set-asides.
- *Conduct a full analysis of the effect of bidding credits and spectrum set-asides.* The logic of competitive bidding indicates that many of the Commission's policies for assisting certain classes of favored bidders are self-defeating and that the real impacts come from the use of license set-asides. These policies should be subject to further analysis as a first step in improving them.

Before the
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Washington, DC 20554

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| Inquiry on Competitive Bidding Process |) | WT Docket No. 97-150 |
| for Report to Congress |) | |

**COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.
IN RESPONSE TO PUBLIC NOTICE:
COMMISSION OPENS INQUIRY ON COMPETITIVE
BIDDING PROCESS FOR REPORT TO CONGRESS**

AirTouch Communications, Inc. (AirTouch)¹ hereby submits the following comments in the above-captioned proceeding.²

I. PREFACE

Overall, the Federal Communications Commission (the "Commission") has done a good job of designing and implementing auctions. There are however, several important areas in which there is room for improvement. One is the use of subsidies and spectrum set-asides to promote the interests of certain favored classes of bidders. Current policies do not effectively and efficiently promote several of the stated goals of Congress in this area. Accordingly, these policies should be modified. In these comments, AirTouch submits several suggestions for improvement. AirTouch also emphasizes that the Commission's

¹ AirTouch is a wireless communications company with interests in cellular, paging, personal communications services, satellite and other operations.

² *Commission Opens Inquiry on Competitive Bidding Process for Report to Congress*, WT Docket No. 97-150, FCC Docket No. 96-232 (released July 2, 1997) ("*Public Notice*").

auction authority, as set forth in Section 309(j) of the Communication's Act, does not envision the use of competitive bidding as the sole mechanism for awarding licenses. In some instances the public interest is best served by enacting rules and procedures that accommodate spectrum sharing and the licensing of multiple providers.³ Therefore, the FCC should carefully review the objectives set forth in Section 309(j)(3) of the Act and assess whether competitive bidding is the most appropriate mechanism for awarding licenses.

To understand the impacts of the Commission's auction policy fully, that policy must be placed in the broader context of Commission allotment and assignment policies. In these comments, AirTouch suggests several changes to these policies that will improve the working of spectrum auctions and result in greater benefits being enjoyed by consumers of wireless services.

II. INTRODUCTION

The Commission seeks public comment in five areas:

- a.* Projection of revenues from the use of competitive bidding systems;
- b.* Comparison of different methodologies;
- c.* Evaluation of how competitive bidding has facilitated the introduction of new technologies and the entry of new companies into the telecommunications market;

³ For example, AirTouch does not support the use of auctions to award licenses for mobile satellite services. In most instances, all potential licensees can be accommodated without the use of auctions. Furthermore, since mobile satellite service offerings are global in scope, if the FCC uses auctions to award the spectrum in the U.S., then it sets a precedent that other nations could use as an excuse to extract excessive payments from American carriers. Lastly, it would be impossible to coordinate the global auctioning of such spectrum in a rational manner.

- d.* Evaluation of how competitive bidding methodologies have secured prompt delivery of service to rural areas; and
- e.* Evaluation of how the Commission's competitive bidding rules ensure that small businesses, rural telephone companies and businesses owned by women and members of minority groups have been able to participate successfully in the competitive bidding process.

In addition, the Commission invites commenters to recommend specific actions that the Commission should take in order to improve the competitive bidding rules and procedures and to fulfill the objectives of Section 309(j) of the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act").

In these comments, AirTouch provides information relevant to evaluating areas *a*, *c*, and *e*. Each area is addressed in a separate section of these comments. At the end of each section, AirTouch proposes specific actions that the Commission should take in order to better fulfill the relevant objectives of the Budget Act.

III. PROJECTION OF REVENUES FROM THE USE OF COMPETITIVE BIDDING SYSTEMS

A. Evaluation

The revenue derived from auctions depends on a number of factors, including the amount of spectrum available for given uses, bidders' *expectations* about future amounts of spectrum that will be available, and potential uses of spectrum. To date, the Commission has not clearly spelled out its plans for making spectrum available, either through auctions or other means. Consequently, bidders cannot be sure how much spectrum will be allocated for a given use in the future. The Commission's failure to provide a clearly specified plan for spectrum allocation thus creates significant uncertainty for business planners.

To the extent that bidders systematically underestimate how much spectrum will be allocated for a given use in the future, this uncertainty may have the effect of raising additional money for the U.S. Treasury by encouraging bidders to make payments based

on perceived spectrum scarcity that later turns out to be illusory. But in the absence of Commission commitments, prospective bidders also may over-estimate future allocations of spectrum and thus bid less for spectrum put up for auction. While it might appear that these two forces would “average out,” it is much more reasonable to expect the overall impact on bidding to be negative. The negative overall result arises from the fact that the uncertainty itself has a chilling effect on business investments, both the initial bids for spectrum and the later investments in infrastructure made by winning bidders.

Moreover, even if auction prices initially are elevated as bidders miscalculate the Commission’s future allocation plans, in the long run such a policy undermines trust in the Commission. This loss of trust creates additional uncertainty and can depress both the bids made at auctions and the investments made by those firms who win licenses. In addition, simple fairness dictates that the Commission should not be acting as a durable goods monopolist attempting to convince buyers to pay high prices based on scarcity value and then later making additional spectrum available at a lower cost.⁴

There is another way in which uncertainty about Commission policy threatens to reduce auction revenues. At present, it is unclear how the Commission will continue to deal with winning bidders who fail to honor their commitments. The expected revenue generated by auctions will fall if the Commission does not enforce its rules strictly and hold winning bidders accountable for their actions.

The Commission has made unprecedented efforts to design efficiently functioning auctions. As the Commission clearly recognizes, the “rules of the game” can have strong effects on potential licensees’ willingness to bid. If winning bidders are not punished for failing to honor their commitments, then in effect sincere bidders will be playing by one set of rules and insincere bidders by a different set. In addition to its manifest inequity,

⁴ For a discussions of the incentives of a durable goods monopolist and the difficulties of consistently fooling customers, see F. Gul, H. Sonnenschein, and R. Wilson, “Foundations of Dynamic Monopoly and the Coase Conjecture,” *Journal of Economic Theory* 39:97-119.

such inconsistency has several undesirable efficiency effects and can be expected to reduce the amounts collected by the U.S. Treasury from the license auctions.

There are two general reasons why revenues will be reduced by the failure to enforce the rules with respect to winning bidders. The first reason follows from the importance of information flows during the auction process. In a so-called *common values* setting, the winning bidder will be concerned with the *winner's curse*⁵ and will tend to bid less because of it. One way to reduce the winners' curse is to increase the flow of information that takes place during an auction so that any one bidder can see that other bidders also place high valuations on the licenses. This information flow is distorted when some firms feel free to bid insincerely because they do not expect to have to honor their commitments should they turn out to be the high bidders. When the bids fail to reflect bidders' true beliefs about the value of the spectrum, the information content of the bids generated during the various rounds of the auction is contaminated. Bidders thus are more concerned with the winner's curse, and will rationally reduce their bids. The Commission's considerable efforts to design auctions that convey information will thus be undermined. The result will likely be a decline in the revenues actually collected by the Treasury.

There is another source of revenue loss that must also be considered. This source is most easily seen by example. Suppose that one carrier is sincerely willing to pay 8 for a license, but is outbid by another carrier that insincerely bids 10 and wins the auction. The winning bidder then refuses to pay the full amount of its bid and instead offers to pay 6. At that point, any one of several things may happen. One possibility is that the government accepts 6, which is less than the 8 the sincere bidder was willing to pay. Alternatively, the government may go through the costly process of taking back the

⁵ The winner's curse occurs because the entity bidding the most for the auctioned item may have been overly optimistic about the license value in comparison with all of the other bidders. Of course, the higher bid may also reflect the fact that the license really is worth more to that bidder than to others.

license and re-auctioning it. Whether the government accepts the lower amount or reclaims and re-auctions the license, the net proceeds to the U.S. Treasury will be reduced.

B. Recommended Actions

There are several actions that the Commission should undertake in order to improve the auction process in ways that will increase the value of the spectrum and thus, the revenue received by the U.S. Treasury. These actions include:

- *The Commission should clearly specify its plans for future spectrum allocation.* The Commission should be clear about future spectrum allocation, whether by auctions or by other means. For the reasons explained above, the improved investment climate that comes with the reduction in uncertainty will lead to greater bids when auctions are used, as well as to increased investment in wireless infrastructure in general. The results will thus be more money for the U.S. Treasury, greater consumer benefits, and less risk for investors. By eliminating the uncertainty that its present policies create, the Commission can create a win-win situation.
- *The Commission should allocate spectrum for specific uses.* A well-defined spectrum allocation plan creates greater certainty for business planners. Hence, as discussed above, such a plan allows carriers to formulate strategies with less risk and to raise capital more cheaply and easily. This will in turn permit wireless carriers to rapidly build out their networks and better serve consumers.
- *The Commission should strongly punish winning bidders who fail to honor their commitments.* In this way, the Commission can ensure that: (a) everyone is playing by the same set of rules; (b) bidders can use information generated in earlier rounds of an auction to gain confidence in raising their bids; and (c) the U.S. Treasury will get what it has been promised. AirTouch Supports the Commission's actions in the auction for the Interactive Video and Data Service (IVDS) because the FCC sent a clear signal that there is a certainty in the Commission's auctions.⁶

⁶ The Commission adopted specific competitive bidding rules and procedures (including terms and conditions of license payments) for the 594 IVDS licenses to be auctioned in July 1994. *See Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994). Upon the close of the auction, several winning bidders failed to meet the payment deadlines and submitted requests for waiver seeking extensions of the deadlines. The Commission denied these waiver

- *The Commission should not change the rules of the game in the middle of the game.* Bidders need to know the rules of each auction and service beforehand in order to formulate bidding strategies and to make plans to offer services in the event that they succeed in winning a license. It is thus vital that the Commission announce unambiguous rules for its auctions and remain committed to those rules. Unfortunately, the Commission has not always done this. For example, in 1994 the Commission adopted rules governing all licenses to be auctioned for the narrowband PCS service,⁷ which provided for the licenses to be auctioned in phases. The initial two auctions were held for nationwide and regional narrowband PCS licenses. Bidders devised business plans and bidding strategies, and participated in those auctions based on the rules stated by the Commission at the time. Before auctioning licenses to the remaining spectrum allocated for this service however, the Commission proposed to alter many important service rules, including the number and geographic scope of the licenses, the eligibility criteria for certain licenses, and the treatment of designated entities.⁸ Such actions undercut bidder and investor confidence in the stability of the Commission's rules, which has the effect of raising investors' cost of capital and slowing investment.

requests. *See* Order, 9 FCC Rcd 6384 (1994); Memorandum Opinion and Order, 10 FCC Rcd 12153 (1995); Memorandum Opinion and Order, 11 FCC Rcd 8211 (1996). The Commission's denial of these requests was recently upheld by the United States Court of Appeals for the District of Columbia Circuit. *See Commercial Realty St. Pete v. FCC*, 1997 U.S. App. LEXIS 16345 (1997). The Court found that the Commission's denial of the waiver requests and determination that these bidders were in default were consistent with prior Commission action. Additional winning bidders submitted waiver requests of the second payment deadlines, which the Commission also denied. *See* Order 10 FCC Rcd 4520 (1995); Memorandum Opinion and Order, 11 FCC Rcd 5240 (1996). The licenses defaulted on were scheduled to be reaucted in February 1997, but this reauction has since been postponed. *See* Public Notice 96-1958 (Dec. 12, 1996).

⁷ *In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Implementations of Section 309(j) of the Communications Act - Competitive Bidding, Narrowband PCS*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, Report and Order and Further Notice of Proposed Rulemaking, 62 Fed. Reg. 27507 (1997).

⁸ *Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services*, GEN Docket No. 90-314, ET Docket No. 92-100, Memorandum Opinion and Order, 9 FCC Rcd 1309, 1311 ¶ 15 (1994).

IV. EFFECTS OF COMPETITIVE BIDDING ON THE INTRODUCTION OF NEW TECHNOLOGIES AND THE ENTRY OF NEW COMPANIES INTO THE TELECOMMUNICATIONS MARKET

A. Evaluation

The Commission seeks comments on the several specific questions including:

- What effects are new entities having on the availability to the public of competitive communications offerings?

The Commission should recognize that subsidies and set-asides are not what create service diversity and competition for consumers. Indeed, by creating spectrum set-asides for limited classes of bidders, the Commission has more likely than not reduced the strength of competition from which consumers might otherwise benefit. This conclusion follows from the important fact that by setting the spectrum aside for one group of favored bidders, the Commission is denying access to that spectrum by other potential service providers. Existing service providers who did not qualify as designated entities for the broadband PCS auctions might well have brought new or expanded services on line more quickly given their core competencies and experience.

Another point is that the Commission's subsidy and set-aside programs may be creating licensees who are incapable of providing retail services on their own. To the extent that a given designated entity becomes a wholesaler who sells much, if not all, of its capacity to a single incumbent retail service provider, the primary outcome of the policies may be to subsidize that incumbent carrier rather than a firm of the type the policies are intended to help.

Another question posed by the Commission is the following:

- Has the auction process or the timing of the auctions adversely affected the introduction of new technologies in any way?

The answer is: yes, for the following three reasons. First, as noted above, by excluding experienced firms from obtaining certain blocks of spectrum, the

Commission's policies may be excluding those firms who could bring new technologies and services to the market the most quickly. Second, as the Commission knows all too well, the use of spectrum set-asides and other preferences has been controversial and has resulted in legal proceedings that have tied up valuable blocks of spectrum. Third, there is a danger that attempts by certain winning bidders to renege on their commitments and renegotiate their payments will further tie up the use of valuable spectrum. This danger is compounded by the fact that these firms may be unable to finance, build, and operate the wireless systems that could otherwise benefit consumers.

B. Recommended Actions

There are several actions that the Commission should undertake in order better meet the objectives of Section 309(j) of the Budget Act with respect to the rapid introduction of new technologies and new companies. These actions include:

- *The Commission should recognize that the use of auctions does not necessarily encourage the rapid introduction of new technologies.* The introduction of new technologies and services is, by its nature, a risky business proposition. The use of auctions compounds the uncertainty and increases the financial pressures for licensees to play it safe by using relatively mature technologies to supply established services.
- *The Commission should clearly specify its plans for future spectrum allocation.* As discussed in Section III above, the Commission should have a clear, publicly stated plan for the future allotment of spectrum. By creating a more certain environment for business planning and investment, such a policy will better promote rapid investment in quality improvement and capacity expansion for current services. In addition, the Commission will be promoting the investment needed for the introduction of innovative new technologies and services.
- *The Commission should allocate spectrum to specific uses.* Again by creating greater certainty, such a policy will produce an economic environment more conducive to rapid investment in new technologies and services.
- *The Commission should strongly punish winning bidders who fail to honor their commitments.* In addition to reducing auction revenues,⁹ the Commission's failure

⁹

See Section III above.

to enforce the auction rules would weaken competition and slow the introduction of new services and technologies. If firms are allowed to renegotiate their bids and still retain their licenses, the wrong firm may end up the winner of the auction because the firm who would have put the spectrum to its highest value use may submit a sincere bid that is lower than some other firm's insincere bid. It is both inefficient and unfair to have licenses awarded on the basis of an applicant's relative willingness to play chicken with the government over default.

- *The Commission should ensure that only qualified entities are granted licenses.*¹⁰ Even if the Commission takes back licenses initially awarded to firms who fail to honor their commitments, the introduction of increased competition and the use of the spectrum to provide innovative new services will be delayed. And the potential for inefficient use of the spectrum is even greater if the Commission does not reclaim the licenses. Hence, in either case it is important for the Commission to minimize the possibility that a winning bidder will later refuse to meet its commitments. One way to do this is to ensure that potential licensees have the technical and financial abilities to bring service to the public. The Commission should require bidders to have the financing needed to cover *both* the cost of the license *and* the buildout of network infrastructure.¹¹ While such an approach involves additional work by the Commission—and might be labeled interference in the market by some—this type of screening is essential in the light of the Commission's policies of favoring certain classes of bidder¹² and the current uncertainty about whether the Commission will strictly enforce its auction rules.

V. EFFECTS OF COMPETITIVE BIDDING RULES ON THE PARTICIPATION OF SMALL BUSINESSES, RURAL TELEPHONE COMPANIES, AND BUSINESSES OWNED BY WOMEN AND MEMBERS OF MINORITY GROUPS

A. Evaluation

The *Public Notice* focuses on the question of whether designated entities have been able to participate successfully in the competitive bidding process. Fundamentally,

¹⁰ While in theory incumbent wireless providers such as AirTouch would benefit from the Commission's granting licenses to unqualified licensees, the practical reality is that the resulting market chaos raises all carriers' costs of obtaining financing.

¹¹ Of course, the commitments obtained from lenders to finance the buildout may be contingent on the bidder's successfully obtaining a license.

¹² See Section V.B below.

this is the wrong question to ask. Successfully competing in the *bidding process* is not a sensible end for public policy to seek and it cannot be what Congress ultimately intended. Rather, successful bidding is a means to achieving a socially desirable end. What is important is successfully competing in the *service markets*. The current rules do not serve that goal for a variety of reasons.

The Commission's policies should recognize the capital intensive nature of the wireless telecommunications industry. In order to succeed in the marketplace, firms will either have to be publicly held or have substantial backing by other, larger firms. Indeed, given the nature of some wireless markets and the need for capital and specialized skills, it is virtually impossible to see how a truly small new business could participate effectively in the marketplace. And when a company with few assets has to borrow hundreds of millions of dollars from a few lenders (and will likely need to borrow even more from them in the future), it is not hard to see that those lenders might exercise considerable de facto control over the borrower. The Commission might ask whether the goals of Congress and the Commission are met if one or two designated entities lead a firm otherwise fully owned by large, foreign enterprises.

In the Public Notice, the Commission states that its measures have allowed small businesses to overcome barriers related to access to capital. AirTouch believes that this faith is misplaced on two counts. First, the Commission has not established that capital markets fail to work for entrepreneurs and small businesses. Craig McCaw, for example, was able to turn a family business into one of the leading wireless service providers. The mere fact that small businesses would like to be able to obtain capital at lower costs or in greater amounts does not establish that small businesses are discriminated against. Their difficulty in raising capital may merely reflect the fact that they have fewer assets to secure the financing, less of a track record, and may lack the skills and complementary assets necessary to succeed in the marketplace. It does not improve the efficiency of the

market to ignores these very real characteristics and loan these firms money at below-market rates.

Second, to the extent that access to capital is a barrier to small businesses, it remains a barrier to financing system build-out even if the licenses are set aside for favored classes of bidder. There is no benefit to either the licensee or telecommunications consumers if a license is granted to a firm that cannot afford to construct a network that utilizes the licensed spectrum. Indeed, one of the possible consequences is that spectrum may be wastefully tied up in lengthy and costly proceedings before the Commission and the courts. Moreover, the resulting uncertainty may increase the risk and cost of investments by other, nonsubsidized entities. A more sensible approach is for the Commission to focus on ways to ensure that small businesses can succeed in the service markets, not just in the initial auction for the license.

B. Recommended Actions

There are several actions that the Commission should undertake in order better to meet the objectives of Section 309(j) of the Budget Act with respect to participation by small businesses. The actions include:

- *Prevent excessive concentration in the granting of subsidies and other preferences to designated entities.* There are several reasons why the Commission should act to ensure that subsidies and preferences do not end up benefiting only a few, relatively large designated entities. One reason is that the policies are designed to help small firms and to create a variety of new entrants. This will not happen if the bulk of the benefits go to only a few entities. A policy that restrains the amount that any one entity can receive ensures that there are greater benefits available for others. This approach is consistent with the Commission's decision to limit the number of C-Block broadband PCS licenses that any one entity can obtain. Moreover, this approach reduces the possibility that some bidders may have business plans that are so dependent on subsidies and preferences that the entities do not have reasonable prospects of succeeding in the marketplace. Further, to the extent that there is a public interest in assisting certain parties whose business plans are inherently more risky, there also is a public interest in diversifying the portfolio of firms that are assisted.

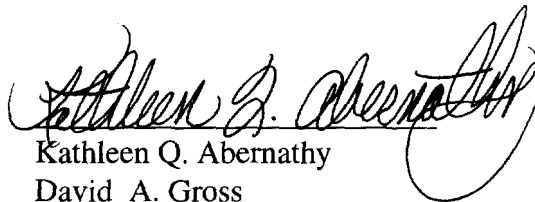
- *Create license areas for designated entities that reflect their more limited capacity to raise capital.* This approach makes bidding by truly small parties feasible because they have a greater chance of raising the capital and acquiring the skills and personnel needed to market their services and operate their networks on a commercially successful basis. Several commenters pointed to this problem in their comments in response to an earlier notice of inquiry concerning entry barriers faced by small businesses.¹³
- *Target subsidies to those services in which legitimate designated entities have realistic chances.* For example, the Commission should focus its efforts on wireless markets that are less capital intensive and where minimum efficient scale is not as large.
- *The Commission should allocate spectrum to specific uses.* As part of its targeting policy, the Commission should specify the uses to which designated entities can put given blocks of spectrum. This conclusion also follows from the fact that a licensee making installment payments who elects to pursue a highly risky strategy is in effect gambling with the public's money. Any concerns about fairness can be addressed by adopting rules that limit the use of spectrum apply by all service providers, not just designated entities.
- *Require significant (percentage) up-front payments even from designated entities.* If an entity cannot make a significant down payment, there is little reason to believe that they will be able to fund the buildout. If there are concerns about fairness, then AirTouch would be willing to be subject to similar buildout requirements even though they are not needed for carriers winning licenses in a free market without the aid of set asides or bidding credits.
- *Conduct a full analysis of the effect of bidding credits and spectrum set asides.* The Commission has created several mechanisms through which it attempts to assist certain favored classes of bidders. Both bidding credits and installment payments at below-market rates are subsidies that reduce the economic cost borne by an entity making any given bid. The logic of competitive bidding indicates that such policies are self-defeating when subsidized bidders are competing with one another. By segregating subsidized parties, the Commission encourages them to dissipate any potential gains of the subsidies. In such a setting, the real effect of the preferential treatment arises from the spectrum set-asides, which ensure a favored entity gets the license. The Commission should examine these issues more carefully in order to ensure that the actual effects of its policies are fully understood and that the policies to achieve their objectives effectively and efficiently.

¹³ See *Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, GN Docket No. 96-113, *Report* (released May 8, 1997).

VI. CONCLUSION

While the Commission had done a good job of designing and implementing auctions, there are several steps that the Commission can and should take to improve the fairness and efficiency of auctions and to increase the benefits enjoyed by consumers of wireless services. These actions can be summarized as follows. First, the Commission should state clear and unambiguous rules both for license auctions and for spectrum allocation more generally. Second, the Commission, as well as private-sector bidders, should stick to these rules.

Respectfully submitted,



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